Tentative Rulings for October 13, 2016
Departments 402, 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

13CECG03503 ***Munoz v. Tarlton & Son, Inc.*** **(Dept. 501)**

14CECG02013 ***Rodney Haron, et al. v. Matthew Thomas Beebe, et al.*** **(Dept. 501)**

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

11CECG04276 ***United Hmong Council, Inc. v. Hmong International New Year Foundation, Inc., et al.*** **is continued to Thursday, October 20, 2016, at 3:30 p.m. in Dept. 402.**

15CECG00900 ***Leon v. Gursaran, et al.*** **both motions continued to October 27, 2016 at 3:30 p.m. in Dept. 503.**

16CECG00791 ***Riddle v. Community Medical Centers*** **is continued to Thursday, October 20, 2016, at 3:30 p.m. in Dept. 402.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

(30)

Re: ***California Consulting, LLC v. Townsend Public Affairs Inc.***

Superior Court No. 15CECG03267

Hearing Date: Thursday, October 13, 2016 (**Dept. 402**)

Motion: Defendants: Townsend Public Affairs, Christopher Townsend, and Chelsea Vonghr Demurrer to Complaint

Tentative Ruling:
To order the demurrer off calendar for failure to comply with Code of Civil Procedure section 430.41.

Parties must meet & confer as required by Code of Civil Procedure section 430.41. If the meet & confer is unsuccessful, then the demurring party may calendar a new date for hearing the demurrer to the original complaint.

Explanation:
Before filing a demurrer, the demurring party must meet and confer in person or by telephone with the party that filed the pleading which is subject to the demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. (Code Civ. Proc., §430.41(a).)

A demurring party must file and serve with the demurrer a declaration stating the means by which it met and conferred with the party that filed the pleading subject to demurrer and that the parties did not reach an agreement resolving the objections raised in the demurrer or stating that the party that filed the pleading subject to demurrer failed to respond to the demurring party's request to meet and confer or otherwise failed to meet and confer in good faith. (Code Civ. Proc., §430.41(a)(3).)

Here, Defendants submit no evidence of compliance with Code of Civil Procedure section 430.41. Therefore, demurrer is ordered off calendar.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JYH on 10/11/16
(Judge's initials) (Date)

(24) **Tentative Ruling**

Re: ***Employer Network, LLC v. Synergy Group***
Court Case No. 13CECG00789

Hearing Date: **October 13, 2016 (Dept. 402)**

Motion: Defendants' Motion to Tax Costs

Tentative Ruling:

To order off calendar in light of the bankruptcy stay in place pursuant to the bankruptcy filed by defendant Synergy Group HCM, Inc. on September 1, 2016, subject to the motion being re-calendared in the event plaintiff obtains relief from the stay from the Bankruptcy Court.

Explanation:

Even though no party has yet filed a Notice of Stay, the court has independently verified that defendant did indeed file a bankruptcy petition on September 1, 2016.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this ruling will serve as the order of the court, and service by the clerk of the minute order will constitute notice of the order.

Tentative Ruling
Issued By: JYH on 10/11/16
(Judge's initials) (Date)

(28) **Tentative Ruling**

Re: ***Penn v. Beazer Homes Holding Corp.***

Case No. 15CECG03926

Hearing Date: October 13, 2016 (Dept. 402)

Motion: By Proposed Intervenor Travelers Indemnity Company to Intervene on behalf of Cross-Defendant Baku Corporation dba Alder Creek Millwork

Tentative Ruling:

To continue the hearing on this motion to 3:30 p.m. November 3, 2016 in Department 402. Intervenor shall file with the Court supporting documentation for its motion, as set forth below, by October 21, 2016. Any objection to this documentation must be filed with the Court by October 27, 2016.

Explanation:

This lawsuit was filed on behalf of the owners of a single-family home asserting causes of action for violations of building standards and breaches of express warranty and contract. Defendant, Beazer Homes Holding Corp. filed a cross-complaint against various subcontractors who supplied labor and/or materials during construction of the homes. One of these subcontractors is Baku Corporation dba Alder Creek Millwork ("Baku"). Baku is now, apparently, a suspended corporation.

Intervenor Travelers Indemnity Company ("Intervenor") issued insurance policies to Baku between 2010 and 2011. Intervenor argues that it may be obligated to pay any judgment rendered against Baku and therefore moves for leave to intervene in this action to protect its interests.

California Code of Civil Procedure §387, subdivision (a) states, in pertinent part:

> Upon timely application, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made

> by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court and served upon the parties to the action or proceeding who have not appeared in the same manner as upon the commencement of an original action, and upon the attorneys of the parties who have appeared, or upon the party if he has appeared without an attorney.

Further, it is true that insurance company "may not answer and litigate the lawsuit in the name of the suspended corporation without intervening in the case." (*Kaufman & Broad Communities v. Performance Plastering* (2006) 136 Cal.App.4th 212, 216.) A liability insurer has a right to intervene where an insured is barred from defending itself, such as when the insured corporation is suspended. (*Reliance Ins. Co. v. Sup. Ct. (Wells)* (2000) 84 Cal.App.4th 383, 386-87.)

However, in its moving papers, Intervenor has not produced any evidence or documentation that the corporation is suspended or that Intervenor is insuring Baku. Intervenor must provide such documentation before the Court can rule on this motion. Therefore, the hearing is continued to allow Intervenor the opportunity to file the appropriate supplemental documentation.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JYH on 10/11/16

(Judge's initials) (Date)

Tentative Rulings for Department 403

(19) **Tentative Ruling**

Re: ***Capriola v. Express Services, Inc.***
Court Case No. 15CECG02741

Hearing Date: October 13, 2016 (Department 403)

Motion: By plaintiff to compel further responses to Request for Production, Set No. 2 from defendant Express Services, Inc.

Tentative Ruling:

To order that plaintiff make a motion to seal the declaration she filed which contains exhibits including social security numbers, and submit a substitute declaration and exhibits from which such numbers are redacted, in compliance with California Rules of Court, Rule 1.20(b). Such motions need be filed by October 19, 2016 and will be heard at 3:30 p.m. on November 1, 2016.

To grant motion as to all requests at issue, ordering a further response and production of all responsive documents without objections on or before November 1, 2016. To order sanctions of $1460.00 payable by defendant and its counsel of record on or before that date.

Explanation:

California has long declared that social security numbers fall within the scope of private information. *Copley Press, Inc. v. Superior Court* (1991) 228 Cal. App. 3d 77, 80-81. Since 2001, Civil Code section 1798.85 has forbidden any person or entity from communicating another's social security number to the general public. Since 2007, the California Rules of Court have specifically barred filing of documents with unredacted social security numbers in them, as a means of protecting privacy. It is a concern where persons hoping to represent a putative class violate that rule.

The responses at issue have been demonstrated to be untimely served. Code of Civil Procedure section 2031.300 states, in part:

> "If a party to whom a demand for inspection, copying, testing, or sampling is directed fails to serve a timely response to it, the following rules shall apply: (a) The party to whom the demand for inspection . . . is directed waives any objection to the demand, including on based on privilege or on the protection for work product . . . The court, on motion, may relieve that party from this waiver on its determination that . . . (2) the party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect."

Responding party does not address the failure to timely serve the responses, and no motion for relief has been made in the three months since service was

accomplished. The meet and confer efforts were sufficient to raise this dispositive issue.

"Good cause" is found where there are facts, including those based solely on information and belief and inference that the documents sought are relevant to the subject matter of the action and are material to the issues of the case. *Associated Brewers Distrib. Co. v. Superior Court* (1967) 65 Cal. 2d 583, 588. Information and belief sufficient to demonstrate the documents "might" contain useful evidence is all that is required, as "the showing made by Associated could not be more detailed without an inspection of the documents." The exhibits provided establish sufficient good cause for the discovery at issue.

Under such circumstances, an order compelling a further response without objections is required.

Pursuant to Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KCK on 10/12/16

(Judge's initials) (Date)

(19) **Tentative Ruling**

Re: ***Capriola v. Express Services, Inc.***
Court Case No. 15CECG02741

Hearing Date: October 13, 2016 (Department 403)

Motion: By plaintiff to compel further responses to Request for Admissions, Set No. One, and accompanying Form Interrogatory 17.1 from defendant Express Services Inc.

Tentative Ruling:

To order that plaintiff make a motion to seal the declaration she filed which contains exhibits including social security numbers, and submit a substitute declaration and exhibits from which such numbers are redacted, in compliance with California Rules of Court, Rule 1.20(b). Such motions need be filed by October 19, 2016 and will be heard at 3:30 p.m. on November 1, 2016.

To grant the motion, ordering a further response without objections to be served by November 1, 2016 to each discovery device. To grant sanctions payable by defendant and its counsel of record, but reduce the amount to $2,510.00.

Explanation:

The discussion of the problem with including social security numbers in filings set forth in the tentative for the motion to compel further responses to document requests applies fully here.

Defendant does not dispute that the responses were not timely served. No motion for relief from waiver has been made in the three months since the responses were served. Untimely service waives all objections, and the further responses ordered shall be without objections.

> "The request for admission differs fundamentally from the other five discovery tools (depositions, interrogatories, inspection demands, medical examinations, and expert witness exchanges). These devices principally seek to *obtain* proof for use at trial. In marked contrast, admission requests seek to *eliminate* the need for proof: '[T]he purpose of the admissions procedure ... is to limit the triable issues and spare the parties the burden and expense of litigating undisputed issues.' Sometimes, the admissions obtained will even leave the party making them vulnerable to summary judgment."
>
> *St. Mary v. Superior Court* (2014) 223 Cal. App. 4th 762, 775.

"The calls of ambiguity, calling for opinion or conclusion . . . have been discussed in the other decisions filed this day. They were found to be untenable. The reasons set forth in those cases for holding such objection unsound when applied to other discovery procedures are peculiarly applicable to requests for admissions. Most of the other discovery procedures are aimed primarily at assisting counsel to prepare for trial. Requests for admission, on the other hand, are primarily aimed at setting at rest a triable issue so that it will not have to be tried. Thus, such requests, in a most definite manner, are aimed at expediting the trial. For this reason, the fact that the request is for the admission of a controversial matter, or one involving complex facts, or calls for an opinion, is of no moment."

Cembrook v. Sup. Ct. (1961) 56 Cal. 2d 423, 429.

The term "genuine" objected to by defendant is a term which appears in the statute itself. See Code of Civil Procedure section 2033.010. California's Legislature, in turn, borrowed the language from Federal Rules of Civil Procedure Rule 36. *Brochturp v. Intep* (1987) 190 Cal. App. 3d 323, 331. Rule 36 permits a request seeking admission of "the genuineness of any described documents." The purpose of Rule 36 is the same, to avoid trial time on issues not in good faith dispute. *In re Cunningham* (E.D. Penn. 2015) 526 B.R. 578, 586.

Lack of personal knowledge is not a basis for failure to admit or deny a request. *Smith v. Circle P Ranch Co.* (1978) 87 Cal. App. 3d 267, 273; *Allen v. Pitchess* (1973) 36 Cal. App. 3d 321 If necessary, where a party will have an opinion on the issue at trial, that party must hire an expert to advise it so as to be able to answer a request for admission. *Chodos v. Superior Court* (1963) 215 Cal. App. 2d 318.

The statements by defendant in its opposition give rise to the inference that defendant is able to admit the genuineness of parts or all of some of the documents. "Each answer in the response shall be as complete and straightforward as the information reasonably available to the responding party permits. (b) Each answer shall (1) admit so much of the mater involved in the request as it true, either as expressed in the request itself or as clearly qualified by the responding party, (B) deny so much of the matter involved in the request as untrue . . ." Code of Civil Procedure section 2033.220(a) and (b)(1).

If there are pages missing, defendant can admit the genuineness of the pages provided, while noting the absence of all pages. If pages have handwriting on them that defendant cannot authenticate, then it can admit the genuineness of only that portion it can confirm. The point of requests for admission is to lay to rest for trial matters which the defendant does not intend to dispute at trial.

Defendant must seek information from available sources to verify the documents if they are not its own or are modified by the addition of information, such as information added by plaintiff or Veneratus. In it responses to form interrogatory 17.1, defendant states it obtained information that certain documents were removed from Veneratus, but fails to provide identification of those it spoke to or of the policies stated

to be breached by such actions. Defendant must also give location information for such witnesses so that plaintiff may plan depositions, although it is proper to note where a witness is represented by counsel.

Sanctions are appropriate, but the hourly fee is not supported by evidence necessary to nullify the rule that "The lodestar is the basic fee for comparable legal services in the community." *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. $350 is appropriate in this community. The Court also finds that seven (7) hours was sufficient for this motion.

Pursuant to Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute o?rder adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: KCK on 10/12/16

(Judge's initials) (Date)

(24) **Tentative Ruling**

Re: ***Green v. CDCR***
Court Case No. 15CECG03951

Hearing Date: **October 13, 2016 (Dept. 403)**

Motion: Demurrer of Defendant City of Coalinga to Complaint

Tentative Ruling:

To sustain the City of Coalinga's demurrer, without leave to amend. Defendant City of Coalinga defendant is directed to submit to this court, within 7 days of service of the minute order, a proposed judgment dismissing the action as it.

Oral argument on this matter is continued to Thursday, October 27, 2016, at 3:30 p.m. in Dept. 403 so that the Plaintiff may be present for oral argument via Court Call.

Explanation:

Demurrer cannot be sustained based on plaintiff's failure to comply with the pre-filing requirements of the Tort Claims Act. Defendant relies on *Fowler v. Howell* (1996) 42 Cal.App.4th 1746 in arguing that the court can take judicial notice of the City employee's declaration to find that plaintiff did not file a government claim against the City prior to filing his complaint. However, defendant has completely misconstrued the holding of *Fowler v. Howell*. The court there did not take judicial notice "of the absence of a claim based on the declaration of an employee who was familiar with the records and who searched the records and did not find a claim," as defendant argues. Instead, the court took judicial notice of the findings of an administrative law judge, noting that the court could take judicial notice that a court made a particular ruling. (*Id*. at p. 1750.) In fact, the plaintiff in that case *had not alleged compliance* because he relied on alleging defendant was not acting within the scope of her employment in doing the acts alleged to be tortious. (*Id.* at 1749.) Thus, there was no question he had not complied; he simply argued he was excused from doing so.

The City employee's declaration is not subject to judicial notice. "The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable." (*Fremont Indem. Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 114.) Judicial notice of matters upon demurrer will be dispositive only in those instances where there is not or cannot be a factual dispute concerning that which is sought to be judicially noticed.

The complaint alleges that plaintiff complied with the pre-filing requirements, at ¶9, which states that he "is required to comply with a claims statute and has complied

with the applicable claims statute[.]" General allegations are sufficient to plead compliance with the claim presentation requirement of the Government Claims Act. (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1237—pointing out this is consistent with the approach taken by the Judicial Council in its pleading forms, which make a simple general allegation of compliance.)

However, the other grounds of demurrer argued by defendant are well taken, and the demurrer must be sustained. The complaint is uncertain as it pertains to the City of Coalinga, as there are no facts showing any affirmative conduct by the City which would support a claim of statutory liability against it. To state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity, including existence of statutory duty; duty cannot be alleged simply by stating that defendant had duty under law. In other words, the statute or enactment claimed to establish duty must be identified in pleadings. (*Zuniga* v. *Housing Authority of City of Los Angeles* (1995) 41 Cal.App.4th 82 [48 Cal.Rptr.2d 353].)

The complaint further fails to state facts sufficient to constitute a cause of action against this public entity as no statutory basis for liability is stated. A governmental entity can only be liable in tort based on an authorizing statute; it cannot be held liable for an injury under common law negligence. (Gov. Code § 815, subd. (a); *Stevenson v. San Francisco Housing Authority* (1994) 24 Cal.App.4th 269, 279; *Guzman v. County of Monterey* (2009) 46 Cal.4th 887, 897.) Civil Code Section 1714, which imposes a general duty of care on all persons, is an insufficient basis to impose direct liability on public agencies. (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1180.)

The question is whether leave to amend should be granted. In opposition, plaintiff argues many theories not contained in the complaint; these can be taken as arguments as to how he would seek to amend. At best, plaintiff argues he would allege that the City is liable for plaintiff's injuries because it voted to have the prison built in Coalinga, and issued building permits and did other acts which allowed the prison to be built. However, under Government Code section 821 a public employee, and thus the public entity, is shielded from immunity for legislative functions, and under Government Code section 820.2, public employees have immunity for discretionary functions. Furthermore, Government Code section 818.4 provides that a public entity "is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked." Even if the contentions made in the Opposition had been alleged in the complaint, the claims would be barred by statutory immunity under the Government Code. No leave to amend can be granted.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this

ruling will serve as the order of the court, and service by the clerk of the minute order will constitute notice of the order.

Tentative Ruling

Issued By: KCK on 10/12/16

(Judge's initials) (Date)

(24) **Tentative Ruling**

Re: ***Scott v. Whalen***
Court Case No. 15CECG01601

Hearing Date: **October 13, 2016 (Dept. 403)**

Motion: Plaintiff's Motion to Enforce Settlement Agreement

Tentative Ruling:

To grant judgment in the principal amount of $27,249.99, with prejudgment interest in the amount of $2,592.11, attorney fees in the amount of $1,780.00, and costs in the amount of $60.00, for a total of $31,682.10.

However, the court will not sign the proposed judgment prepared by plaintiff, as it has unnecessary and potentially confusing language and exhibits. Counsel is directed to submit a new form of judgment pursuant to the terms in the paragraph above. No exhibits are needed. The court recommends that counsel simply use the Judicial Council form of Judgment.

Explanation:

In pertinent part, Code of Civil Procedure Section 664.6 provides as follows: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court . . .for settlement of the case . . . the court, upon motion, may enter judgment pursuant to the terms of the settlement."

Here, the parties have a writing, signed by them outside the presence of the court, and litigation is still pending (i.e., no dismissal has yet been filed), therefore entry of judgment pursuant to Section 664.6 is proper pursuant to the terms of the "Settlement Agreement and Mutual Release" and as proven by the declarations of plaintiff and plaintiff's counsel.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this ruling will serve as the order of the court, and service by the clerk of the minute order will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 10/12/16
(Judge's initials) (Date)

Tentative Rulings for Department 501

(28) **Tentative Ruling**

Re: ***PACCAR Financial Corp. v. Kumar.***

Case No. 16CECG02753

Hearing Date: October 13, 2016 (Dept. 501)

Motion: By Plaintiff for a Writ of Possession.

Tentative Ruling:

To deny the application without prejudice.

Explanation:

[Note- to date, no opposition or reply papers appear in the Court's files.]

Whether a writ of possession is to be granted is governed by Code of Civil Procedure §512.060, which states:

> "a) At the hearing, a writ of possession shall issue if both of the following are found:
> (1) The plaintiff has established the probable validity of the plaintiff's claim to possession of the property.
> (2) The undertaking requirements of Section 515.010 are satisfied."

Here, the Plaintiff has provided a proof of a contract signed by the defendant. However, Plaintiff provides no written proof of missed payments. The most Plaintiff provides is a statement by Plaintiff's "Corporate Portfolio Supervisor that: "On or about May 23, 2016, an installment came due under the terms of Agreement [sic], Exhibit 'A' to the complaint, but said Defendant failed and refused to make the payment which came due on that date nor any subsequent installments which have come due since that time." (Beck Decl. ¶ 11.) However, there are no copies of bills or statements to back up this assertion.

Further, the moving papers must be properly served. (Code Civ.Proc. §1005.) Here, the proof of service indicates that the woman at the address served indicated that Defendant had not resided at the house for over a year. There is nothing in the supporting papers to indicate that the address was a proper address to effectuate actual notice of the motion. (The address listed in the Agreement between the parties, for example, lists a different address.)

Because the moving party has not shown the probable validity of its claims, and because it is unclear if defendant has been provided actual notice of these proceedings, the application is denied without prejudice.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 10/12/16

(Judge's initials) (Date)

(6)

Tentative Ruling

Re: ***David B. Kaye M.D., Inc. v. Ryan, Christie, Quinn, Provost & Horn***
Superior Court Case No.: 14CECG00190

Hearing Date: October 13, 2016 (**Dept. 501**)

Motion: By Plaintiffs/Cross Defendants David B. Kaye M.D. Inc., dba Natural Vision, David B. Kaye, and Loan K. Nguyen to strike and/or tax costs

Tentative Ruling:

To grant, in part, taxing the $804.25 fee concerning the petition for writ of mandate, and the $3,222.38 in non-court-ordered transcripts, and to deny the remainder of the motion, leaving $96,093.76 in allowable costs.

Explanation:

If the items on their face appear to be proper charges, the verified memorandum of costs is prima facie evidence of their propriety, and the burden is on the party seeking to tax costs to show they were not reasonable or necessary. (*Ladas v. California State Auto. Ass'n* (1993) 19 Cal.App.4th 761, 774-776.) In the absence of such proof the claimed item must be allowed unless it falls outside the purview of the statute or rule. [Internal citations omitted.] (*Combs v. Haddock* (1962) 209 Cal.App.2d 627, 633.)

The $804.25 in fees for filing the petition for writ of mandate and the $3,222.38 in non-court-ordered transcripts are thus disallowed.

The other costs have been substantiated, and the section 998 offer made appears to have been reasonably when made given the information known at the time. (Dec. of Jerry Casheros, ¶13, exhibit H.) Defendants have presented a declaration under oath that the time charged by Mr. Barrett occurred after the offer was made. Further, Mr. Barrett reviewed more than just the tax returns, and served as an expert on the damages issue as well. Defendants incurred costs to dismiss the individual Plaintiffs and their causes of action from the case, as well as the claim for punitive damages. The depositions of Narine Orkusyan, Gabriel Martinez, and Russ Baser, all witnesses identified by Plaintiffs, were necessary. The deposition testimony of both Mr. Bader and Dr. Martinez was germane to the scope of engagement defense. Alternative dispute resolution is required in Fresno County, and thus the mediation costs will be permitted. (Code Civ. Proc., § 1033.5, subd. (c)(4).)

The trial exhibits and display technology were extremely helpful to the conduct of the trial, both in terms of avoiding undue consumption of time but to help the jury understand complex accounting issues, as well as credibility issues in Dr. Kaye's

knowledge of key pieces of evidence. Their cost is proportional to the scope of the case which began as a demand for $7 million. (*El Dorado Meat Co. v. Yosemite Meat and Locker Service, Inc.* (2007) 150 Cal.App.4th 612, 620; *Bender v. County of Los Angeles* (2013) 217 Cal.App.4th 968, 990-991.)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 10/12/16

(Judge's initials) (Date)

Tentative Rulings for Department 502

(20) **Tentative Ruling**

Re: ***Pacific Western Bank v. Maroot et al.***, Superior Court Case No. 14CECG02839

Hearing Date: **October 13, 2016 (Dept. 502)**

Motion: Assignment Order

Tentative Ruling:

To grant and sign the proposed order.

Explanation:

An assignment order is a court order assigning the judgment creditor or a receiver the debtor's right to payments due from a third person. It is authorized under Code of Civil procedure section 708.510 et seq. Section 708.510, subdivision (a) provides, in pertinent part: "Except as otherwise provided by law, upon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor or to a receiver appointed pursuant to Article 7 (commencing with Section 708.610) all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments…" This includes commissions and royalties. (*Ibid.*)

The moving papers establish that on April 27, 2016, plaintiff obtained a default judgment in the principal amount of $727,581.53 against Percy L. Williams and Crystal Wells-Williams ("judgment debtors"). Judgment debtors have not paid any part of the judgment. Plaintiff has discovered that judgment debtors are real estate brokers with PEM Properties, and have a listing (real property located at 1416 West Locust Avenue) in escrow as of August 25, 2016. An assignment order is sought so that any commission judgment debtors earn from the listing will be paid to plaintiffs.

Notice of the motion has been served on the judgment debtors, as well as PEM Properties and the title company. No response to the motion has been filed. As the payment of commissions is subject to attachment under section 708.510(a), the motion will be granted.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DSB on 10/11/16
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***C.A. Vanderham and Sons Dairy, et al. v. J&D Wilson and Sons Dairy, et al.***
Court Case No. 15CECG02755

Hearing Date: October 13, 2016 (Dept. 502)

Motion: Disqualify counsel

Tentative Ruling:

To deny. (Cal. Rules of Prof. Conduct, rules 3-310, 3-600.)

Explanation:

"A conflict arises when the circumstances of a particular case present 'a substantial risk that the lawyer's representation of the client would be materially and adversely affected by…the lawyer's duties to another current client, a former client, or a third person.' [Citation.] If competent evidence does not establish such a conflict, the attorney is not disqualified for a conflict. [Citation.]" (*Sharp v. Next Entertainment, Inc.* (2008) 163 Cal.App.4th 410, 426.) "The primary value at stake in cases of simultaneous or dual representation is the attorney's duty -and the client's legitimate expectation- of loyalty, rather than confidentiality." (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 284.)

Where an attorney undertakes representation of an organization, such attorney "shall conform his or her representation to the concept that the client is the organization itself[.]" (Cal. Rules Prof. Conduct, rule 3-600(A).) In other words, where the client is a business entity, the attorney's primary duty is to the entity, not to the entity's principals. (Ibid.) An attorney representing a partnership does not necessarily have an attorney/client relationship with the individual partners. (See *Responsible Citizens v. Superior Court* (1993) 16 Cal.App.4th 1717, 1731-1732.) The threshold issue in such cases is whether counsel representing the business entity also has an attorney/client relationship with the particular principal implicated in the conflict of interests. (See Cal. Rules Prof. Conduct, rule 3-600(A), (D).) Courts must keep in mind that per se disqualification would be unduly harsh where an individual principal would have no reasonable expectation of the attorney's loyalty in matters unrelated to the affairs of the business. (*Responsible Citizens,* supra, 16 Cal.App.4th at pp. 1732-1733.)

In the case at bench, moving party J&D Dairy ("Dairy") moves to disqualify attorney Don Fisher and the Palmieri, Tyler, Wiener, Wilhelm & Waldron, LLP, firm ("Palmieri firm") on the ground that there is a conflict of interest arising from Dairy's sole partners being also, in their capacity as trustees of the Wilson Family Revocable Trust ("Wilson Trust"), minority shareholders of Hidden Valley Cattle Company ("Hidden Valley"), plaintiff in the instant action.

Moving party provides no evidence of a simultaneous representation here, nor any showing that the Palmieri firm obtained any confidential information regarding Dairy by way of Wilson Trust's ownership interest in Hidden Valley, that James and Darla or the Wilson Trust ever developed an attorney/client relationship with the Palmieri firm, or that James and Darla, as trustees of the Wilson Trust, ever had a reasonable expectation of the Palmieri firm's loyalty to them by virtue of the Wilson Trust's minority shareholder status. By undertaking representation of Hidden Valley, the Palmieri firm accepted Hidden Valley as its client, not the Wilson Trust. No showing has been made that James and Darla, Dairy, or the Wilson Trust developed an attorney/client relationship with the Palmieri firm, or had a reasonable expectation of the Palmieri firm's loyalty such that disqualification is justified here. Accordingly, the motion is denied.

Pursuant to California Rules of Court, rule 3.1312, and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DSB on 10/11/16

(Judge's initials) (Date)

(6)

Tentative Ruling

Re: ***HAT Holdings I LLC v. Vital Energy Solutions, LLC***
Superior Court Case No.: 16CECG02918

Hearing Date: October 13, 2016 (**Dept. 502**)

Motion: Petition to release mechanic's lien by HAT Holdings I LLC

Tentative Ruling:

Petitioner must be prepared to present admissible evidence at the hearing concerning (e) whether an extension of credit has been granted, the date to which the extension was granted, and the expiration date for a foreclosure action; (g) whether there is a pending action to foreclose on the lien; and (h) whether the owner or some other holder of an interest in the property has filed a bankruptcy petition or there is some other restraint against filing a lien foreclosure action. (Civ. Code, § 8484.)

The Court is satisfied that items (a)-(d), and (f), have been satisfied.

Explanation:

At the hearing, the claimant is deemed to controvert both the petition and the compliance with the service requirements. The petitioner bears the burden of producing evidence on these issues. The petitioner also bears the burden of proof as to compliance with the service and hearing date requirements. The claimant bears the burden of proof as to the validity of its lien. (Civ. Code, § 8488, subd. (a).)

Petitioner must present admissible evidence on subdivisions (e), (g), and (h) of Civil Code section 8484, in order to prevail on its petition.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DSB on 10/11/16
(Judge's initials) (Date)

(28) **Tentative Ruling**

Re: ***C.A. Vanderham and Sons Dairy, et al. v. J&D Wilson and Sons Dairy***

Case No. 15CECG02755

Hearing Date: October 13, 2016 (Dept. 502)

Motion: By Various Plaintiffs for Writs of Attachment against Defendant J&D Wilson and Sons Dairy.

Tentative Ruling:

To deny the Application for Writ of Attachment by Hidden Valley without prejudice.

To grant the Application for Writ of Attachment by D&V Dairy.

Explanation:

Legal Background

Attachment is a prejudgment remedy that allows a creditor to have a lien on the debtor's assets until final adjudication of the claim sued upon. (Code Civ. Proc., §481.010, *et seq.*) A creditor must follow statutory guidelines in applying for the attachment and establish a *prima facie* claim. (*Lorber Industries of Calif. v. Turbulence, Inc.* (1985) 175 Cal.App.3d 532, 535.)

An attachment may be issued only if the claim sued upon meets the following requirements: (1) it is a claim for money based on a contract, express or implied; (2) the contract is for an amount not less than $500; (3) the claim is either unsecured or secured by personal property; and (4) it is a commercial claim. (Code Civ. Proc., §483.010.)

The procedural requirements for obtaining a writ are:

(1) The claim upon which the attachment is based is one upon which an attachment may issue;
(2) Plaintiff has established the probable validity of the claim;
(3) The attachment is not sought for a purposes other than recovery of the claim upon which the attachment is based;
(4) The amount to be secured by the attachment is greater than zero.
(Code Civ. Proc., §484.090, subd.(a).)

Defendant generally has not disputed that each of these claims is commercial in nature, that the purported amounts are greater than $500, or that they are unsecured. Rather, Defendant has contested whether there was a contract and/or that the Plaintiff has established the probably validity of the claim.

A claim has "probable validity" where "it is more likely than not that the plaintiff will obtain a judgment against the defendant on that claim." (Code Civ. Proc. §481.190.) The evidence presented must be admissible under the applicable rules of evidence. (*Generale Bank Nederland, N.V. v. Eyes of the Beholder Ltd.* (1998) 61 Cal.App.4th 1384, 1390.) The Court has the power to determine disputed facts on the basis of a preponderance of the evidence as disclosed in the affidavits and declarations. (*Hobbs v. Weiss* (1999) 73 Cal.App.4th 76, 80.) The court is not required to accept as true the truth of unopposed testimony. (*Bank of America v. Salinas Nissan, Inc.* (1989) 207 Cal.App.3d 260, 273-74.) Any facts asserted in the evidence in support of the application must be stated "with particularity." (Code Civ. Proc. §482.040.)

Further, determinations of fact in the attachment proceeding have no effect on issues in the main action and are inadmissible at trial. (Code Civ. Proc. §484.100.)

At a prior hearing, on September 15, 2016, this Court denied three of the requested writs without prejudice, and continued the hearing on two others for further briefing.

The remaining writs (per the Court's prior numbering) are "5" and "6":

5) By Plaintiff Hidden Valley for $103,123.89 for "calf raising services."
6) By D&V Dairy for $25,000.00 for "wheat chopping services."

The Writs of Attachment

5) Writ of Attachment by Plaintiff Hidden Valley for "calf raising services."

Plaintiff Hidden Valley Cattle Company seeks a writ of attachment in the amount of $103,123.89 for calf raising services incurred on behalf of Defendant. In opposition, Defendant claims that James Wilson, as a partner in Hidden Valley Cattle Company, has instructed that the amount be paid out of his capital account in Hidden Valley. He does not otherwise contest the debt or its collectability. Plaintiff asserts that "the debt to Plaintiff is owed by J&D Wilson, while the Wilson's partnership interest [sic] in Hidden Valley is owned by the Jim Wilson and Darla Wilson as trustees of the Wilson Family Revocable Trust of January 27, 2009."

The further briefing confirms that Jim Wilson holds some interest in Hidden Valley by virtue of his status as trustee of the family trust which holds a partnership interest in Hidden Valley. Mr. Wilson, through his attorneys, has apparently requested that the Trust's capital account be drawn down to pay the debt owed by J&D Wilson. (Exhibit A to Fisher Declaration.) Hidden Valley has refused, in part because the partnership interest is not owned by J&D Wilson, as such, and, in part, because doing so would be

"nothing more than an accounting entry which puts no money in Hidden Valley's account." (Exh. A to Fisher Decl.)

The burden in a motion for a writ of attachment is on the Plaintiff to show the "probably validity" of its claim. Defendant has provided evidence that it is offering to pay the debt and that Plaintiff is refusing to accept this payment. Plaintiff has produced no evidence to show that Defendant's draw against the capital account is improper. Plaintiff has also produced no legal authority for the proposition that a partner's debt to a partnership cannot be satisfied by recourse to the partner's capital account. Because Plaintiff has not met its burden to show that it is more likely than not to obtain a judgment on this claim, the application is denied.

6) Writ of Attachment by D&V Dairy for "wheat chopping services."

D&V Dairy asserts that on March, 2013, it entered into an oral contract with J&D Wilson whereby D&V Dairy would pay Defendant's 2012 wheat chopping bill to Netto Ag., Inc. and J&D Wilson would reimburse D&V Dairy for that expense. (Vanderham Decl. re: D&V Dairy, ¶4.) Plaintiff asserts Defendant breached the oral agreement when it failed to pay in April, 2013. (Vanderham Decl. re: D&V Dairy, ¶5.)

Defendant asserts that this was a capital contribution by Corry Vanderham, and that there is no evidence of a loan.

In its ruling on this Application, the Court noted that it appeared there might be a statute of limitations defense. (Code of Civil Procedure §339, para. (1)) since, if, as Plaintiff contended, the oral contract was breached in April, 2013, then the statute of limitations would have expired in April, 2015. The present action was filed on August 31, 2015.

In further briefing, Defendant conceded that the statute was tolled pending its bankruptcy and, therefore, the claim was not barred by the statute of limitations.

For the first time, however, Defendant makes the argument that it could not find evidence that it was ever credited by the third party which provided the wheat chopping services, "Netto Ag." Defendant seeks further discovery on this issue and a denial of the writ.

This evidence is not timely presented to the Court and, moreover, goes beyond the scope of the requested briefing. Even if the Court were to consider this issue, the fact that the third party has not credited Defendant for Plaintiff's payment does not contradict Plaintiff's evidence that the payment was made. Defendant has not contested the payment wasn't made or otherwise raised any factual doubt as to such payments.

Based on the evidence cited above, Plaintiff has presented evidence showing the probable validity of its claim for breach of oral contract: there is a promise that J&D Wilson would reimburse D&V Dairy for a payment made to Netto Ag (Vanderham Decl.

re: D&V Dairy, ¶4) and that Defendant breached the oral agreement when it failed to pay in April, 2013 (Vanderham Decl. re: D&V Dairy, ¶5).

Because Plaintiff has established the probable validity of this claim, the writ of attachment will be granted.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DSB on 10/11/16
(Judge's initials) (Date)

Tentative Rulings for Department 503

(28) **Tentative Ruling**

Re: ***Manmohan, et al. v. Anheuser-Bush, LLC, et al.***

Case No. 14CECG03039

Hearing Date: October 13, 2016 (Dept. 503)

Motion: By Defendant Donaghy Sales, LLC to seal records.

Tentative Ruling:

To grant the motion; the subject portions will be maintained as sealed in the Court's records.

Explanation:

Defendant Donaghy Sales, Inc. moved to seal certain portions of Court records concerning Plaintiffs' motion for class certification. Co-Defendant Anheuser-Busch has filed a joinder in this motion.

It appears that the parties have followed the procedures set forth in California Rule of Court 2.551.

California Rule of Court 2.550 delineates the findings that must be made for a court to order records filed under seal:

(a) The existence of an overriding interest that overcomes the right of public access to the record;
(b) The overriding interest supports sealing the record;
(c) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
(d) The proposed sealing is narrowly tailored;
(e) No less restrictive means exist to achieve the overriding interest.

(Cal. Rule of Court 2.550, subd. (d).)

Generally speaking, one example of an "overriding interest" would be to protect trade secrets. (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 300.)

However, a moving party must present "specific enumeration of the facts to be withheld and the specific reasons for withholding them." (*H.B. Fuller Co. v. Doe* (2007)

151 Cal.App.4th 879, 894.) The declaration originally filed in support of the motion merely stated that that the information sought to be sealed constitutes trade secret protected information. For this reason, the Court continued the motion to allow Donaghy Sales the opportunity to file a supplemental declaration to indicate why the redacted portions of the declarations to be filed were entitled to trade secret protection. (*E.g., Providian, supra,* 96 Cal.App.4th at 304.)

The supplemental declaration by Mr. Ryan Donaghy, Defendant Donaghy's president, indicates that the information sought to be redacted comprises information related to sales records per retailer and by geographic location. (Supplemental Declaration (Supp.Decl.) ¶¶5-6.) This information is considered confidential by Donaghy and, while perhaps he does not describe all the ways in which it is confidential, he does indicate that the information is has been compiled over decades of operations and that, were it to be made public, it would cause significant harm to Donaghy's ability to compete in Fresno and Madera Counties. (Supp.Decl. ¶¶7-8.) The redactions are very limited and appear to redact no more than is necessary to protect this information. For all these reasons, the motion is granted.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: A.M. Simpson on 10/12/16
(Judge's initials) (Date)

(5)

Tentative Ruling

Re: ***The People of the State of California, Department of Transportation v. RSA Investments, LLC et al.***
Superior Court Case No. 16 CECG 00940

Hearing Date: October 13, 2016 **(Dept. 503)**

Motion: Order for Possession of Parcel Nos. 86954-1, 86954-2, and 86954-3.

Tentative Ruling:

To grant the motion pursuant to CCP § 1255.410(d). The Plaintiff is granted the right of possession no sooner than **November 15, 2016.** Plaintiff is ordered to serve the Order on **all named Defendants** regardless of whether they have been dismissed.

Explanation:

Background

On March 28, 2016, the People of the State of California filed a complaint in eminent domain for purposes of expanding Hwy 99. On the same day, it filed a Lis Pendens. It appears from the maps attached to the Complaint that the property is located between W. Dakota and N. Valentine Avenues. The parcel nos. are 86954-1, 86954-2, and 86954-3.

The County of Fresno, First American Tile, and Bay Area Employment Development have filed disclaimers of interest. RSA Investments, Inc., the City of Fresno, PG&E, U.S. Small Business Administration and Compass Bank have filed Answers. The Fresno Flood Control District filed a certification in lieu of Answer to the effect that it is owed assessment fees, penalties and interest in the amount of $80,768.

On May 2, 2016, the State filed notice of deposit of **$636,000** with the State Treasurer and the Declaration of Robert Umeda Re: Summary of the basis for the appraisal pursuant to CCP § 1255.010. On July 11, 2016, it filed a motion for an order for possession pursuant to CCP § 1255.410. The motion was served by mail on all Defendants on July 8, 2016.

Notably, counsel for the Plaintiff, Cassandra Hoff states at ¶ 9 of her Declaration that the property is currently occupied. But, the identity of the occupant is not stated. The hearing date is set for October 13, 2016. Prior to the hearing date, the Plaintiff dismissed Defendants E.J. Sanderson, O.W. Davis, Pacific Agriculture and Colonization Company, Madeline Sanderson, Jose Corona, Justin Elliot, Jay Hier-Johnson, Arthur Martinez, Bruce Molar, Rex Nunes and Edward Westrick without prejudice.

Applicable Law

"The Legislature may provide for possession by the condemnor following commencement of eminent domain proceedings upon deposit in court and prompt release to the owner of money determined by the court to be the probable amount of just compensation." (Cal. Const., Art. I, §19.) "The court in which a proceeding in eminent domain is brought has the power to: (a) Determine the right to possession of the property, as between the plaintiff and the defendant, in accordance with this title. (b) Enforce any of its orders for possession by appropriate process. The plaintiff is entitled to enforcement of an order for possession as a matter of right." (CCP § 1230.050.) The "appropriate process" includes writs of possession and orders for possession under CCP § 1255.410 et seq.

The plaintiff may apply for an order for possession at the time of filing the complaint or at any time **after** filing the complaint but prior to entry of judgment. The two conditions are that the plaintiff (a) is entitled to take the property by eminent domain, and (b) has made a deposit that satisfies CCP § 1255.010 et seq. (CCP § 1255.410(a).) The plaintiff is also entitled to possession in either of two special situations: (a) Each defendant entitled to possession has expressed in writing his or her "willingness to surrender possession of the property on or after a stated date." (b) Each defendant has withdrawn a portion of the deposit. (CCP § 1255.460(a).)

The statute requires that the motion for an order of possession describe the property sought to be taken, which may be by reference to the complaint, and the date after which the plaintiff is seeking to take possession. The motion **must** include a statement regarding the property owner's right to oppose the order, which includes notice of the 30-day time limit for filing a written opposition. (CCP § 1255.410(a). The plaintiff must serve a copy of the motion on the record owner and on any occupants. The plaintiff must set the hearing on the motion not less than 60 days after service for unoccupied property and 90 days after service for an occupied dwelling, farm, or business operation. (CCP § 1255.410(b).)

The order must describe the property, which may be by reference to the complaint, and must state the date authorized for possession. (CCP § 1255.460) Where possession is by consent or after withdrawal of a deposit, the order must also state that it is made under CCP § 1255.460.

The plaintiff, by taking possession, does not waive the right to appeal from the judgment, to move to abandon, or to request a new trial. (CCP § 1255.470.) The determination of the right to take by eminent domain—a condition of the order—is preliminary only. "The granting of an order for possession does not prejudice the defendants' right to demur to the complaint or to contest the taking. Conversely, the denial of an order for possession does not require a dismissal of the proceeding and does not prejudice the plaintiff's right to fully litigate the issue if raised by the defendant." "Nothing in this article limits the right of a public entity to exercise its police power in emergency situations." (CCP § 1255.480.)

When the motion is not opposed within 30 days of service, the court must make an order for possession if it finds that **(a)** the plaintiff is entitled to take the property by eminent domain, and **(b)** the plaintiff's deposit satisfies statutory requirements. (CCP § 1255.410(d)(1).) When the property owner or occupant files a timely opposition to the motion, the court also must consider at the hearing (a) whether there is an overriding need for the plaintiff to possess the property prior to final judgment, and whether the plaintiff will suffer substantial hardship if possession is limited or denied, and (b) whether the plaintiff's hardship from limiting or denying possession outweighs any hardship to the property owner or occupant from granting possession. (CCP § 1255.410(d)(2).)

Motion at Bar

Here, the motion was properly set not less than 90 days after service of the notice of motion on the record owner and any occupants of the occupied property. See proof of service on July 8, 2016 via regular mail. The proper warning was given to the Defendants re: opposition. See Notice of Motion at page 2 lines 3-8.

In support of the application, Plaintiff relies upon the Declaration of Garth Fernanadez filed on May 2, 2016 in support of the motion. He states that "there is an overriding need for Caltrans to possess Parcels 86954-1, 2, 3, before the issuance of the final judgment in this proceeding based on its contractual obligations to the contractor and the need to relocate existing utilities and clear the subject parcels of all structures and impediments prior to construction of the project. Plaintiff will suffer a substantial hardship if the application for possession is denied or limited, as the subject parcels will be part of the second phase of the project; the State anticipates an award for phase two in July 2016." See Declaration of Fernandez at ¶ 9. Finally, he states that the subject parcels, cleared of all impediments to construction, must be made available to the contractor by November 15, 2016. Id. at ¶ 5.

As a result, Plaintiff has met all conditions for pre-judgment possession. The Plaintiff is entitled to take the property via eminent domain and has deposited an amount that satisfies the requirements of Article 1 of the Eminent Domain Law. [CCP § 1255.410(a)] See Declaration of Umeda filed on May 2, 2016. Therefore, the motion will be granted pursuant to CCP § 1255.410(d). The Plaintiff is granted the right of possession no sooner than **November 15, 2016.**

Pursuant to California Rules of Court, Rule 391(a) and Code of Civil Procedure § 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: A.M. Simpson on 10/12/16
(Judge's initials) (Date)